



# THE INTERIM

February 2010

A monthly newsletter of the Montana Legislative Branch

## In This Issue

Legislative Training Day	1
2010 Census: How Data Will Be Used	2
Legislator Per Diem: Is It Taxable?	2
Energy & Telecommunications Committee	4
Environmental Quality Council	4
Legislative Council	5
Legislative Finance Committee	6
Revenue & Transportation Committee	8
State Admin & Veteran Affairs Committee	9
State-Tribal Relations Committee	10
Ask an Attorney: Federal Budget Deficit	11
Back Page: Legislative Histories	12
Sources of Legislative History	17
Interim Calendar	18

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at [leg.mt.gov](http://leg.mt.gov).

## Legislative Committees to Sponsor Budget Training for Legislators in March

The Legislative Finance Committee and the Legislative Council will sponsor a Legislative Training Day March 3 at the Capitol to educate legislators about the state budget and federal stimulus package. Grim revenue projections and the governor's proposed implementation of state-agency spending reductions make the training session particularly timely.

The leadership and members of the two committees know that it is difficult for citizen legislators to keep abreast of changes in the financial situation of the state while maintaining their work and community obligations.

With the large changes that have occurred in the general fund revenue forecast, proposed spending reductions, and a more in-depth awareness of public pension costs, the time is right to provide this training. Legislators will better understand these issues and how they will influence the agenda for the 2011 legislative session. Legislators will be better informed and responsive to the needs of the people of Montana in these tough economic times.

To minimize the cost of the program, the training is scheduled to coincide with the meetings of the Legislative Council, the Legislative Audit and Finance Committees, and the Environmental Quality Council. Travel expenses for legislators not already in town for one of these meetings will be provided for one night of lodging, mileage, and a breakfast, but salary will not be provided.

For those who cannot attend, the training will be broadcast over the state public-access television network TVMT, audio-streamed from the legislative website ([leg.mt.gov](http://leg.mt.gov)), and recorded for future reference. The general public also may observe the training online or on TVMT.

The program will include:

- general budget training;
- an update on the budget for the current biennium and need for reductions;

- updates on the current revenue forecasts;
- a budget forecast for the next biennium;
- an update from a state and national perspective on the implementation of the federal stimulus package and HB 645;
- an update on the pension systems' unfunded liabilities and potential implications to state and local governments; and
- an update on education, health and human services, and corrections budgets for this biennium and the next.

Chris Whatley, from the Council of State Governments, will discuss new federal jobs proposals and evaluate how these proposals may affect both state budgets and economic development.

The training will be conducted by the staff of the Legislative Fiscal Division with participation by the research analysts and attorneys of the Legislative Services Division who staff the interim committees to provide integrated staff resources for the legislators. This is one of the Legislative Council's initiatives to provide greater support to the legislators.

For more information, contact Amy Carlson, director, Legislative Fiscal Division, at 406-444-2988 or [acarlson@mt.gov](mailto:acarlson@mt.gov), or Susan Byorth Fox, executive director, Legislative Services Division, at 406-444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

## Countdown to 2010 Census: How Data Collected Through Census Will Be Used

The original purpose of the census was to apportion congressional seats among the states. It is still used for that purpose and also for legislative redistricting and the allocation of federal funds to the states.

The Montana Districting and Apportionment Commission will use census data to apportion the state's population among the 100 legislative House districts. The population count will be available in early 2011. The commission will use the population information to redraw House districts so that the population within each district is close to the same. House districts will then be paired to form 50 Senate districts.

Population changes within the state will affect the area of the new legislative districts. An accurate population count ensures equal representation in the Montana Legislature.

Census data is also used to calculate the distribution of funds for a variety of federal programs, such as school reading programs, school breakfast and lunch programs, public transportation, road maintenance and construction, empowerment zones, programs for the elderly, and emergency food and shelter programs. Even if the idea of taking federal dollars grates, programs that have received these funds in the past will need them in the future. Any loss or reduction in federal dollars means the state may have to make up the difference.

## Legislators Can Encourage Participation

A large amount of information about the census is available on the Montana Legislative Branch website ([leg.mt.gov](http://leg.mt.gov)) under the "For Legislators: 2010 Census" link. For example, there is a sample constituent letter that legislators can send to people in their district to help them understand the importance of completing the census form. There are also talking points that legislators can use when speaking to community groups or issuing press releases.

A Census Toolkit provides fact sheets and other information for elected officials, the public, and schools. Legislators can receive additional information from the Census and Economic Information Center, state Department of Commerce, by filling out a Census Event Planning Form.

Upcoming issues of *The Interim* will include articles on other topics related to the census, including the fate of the census long form and available resources. Contact Susan Byorth Fox, executive director, Legislative Services Division, at 406-444-3064 or [sfox@mt.gov](mailto:sfox@mt.gov) with questions or suggestions for future articles.

Information about the census can also be obtained by contacting the CEIC at 406-841-2740.

## Legislator Per Diem Payments: Are They Considered Taxable Income?

This information is intended to provide general guidance to assist legislators and their tax preparers in handling

legislative per diem payments. Legislators should consult with income tax experts for specific requirements relating to individual circumstances.

## General Rules

All legislator per diem payments not exceeding the amount allowed by federal law that are made to legislators living more than 50 miles from the Capitol are reimbursements made under an accountable plan, are not taxable income of the legislator, and are not subject to withholding or reporting. The difference between the amount allowed by federal law for reimbursement and the actual amount of per diem paid are considered unreimbursed expenses and, subject to certain limitations, may be a “miscellaneous items” deduction by the legislator.

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the Capitol are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by these legislators are unreimbursed expenses and, subject to certain limitations, may be a “miscellaneous items” deduction by the legislator.

Legislator per diem payments made to legislators who reside in Helena are reported as income and are subject to withholding. A legislator residing in Helena may not claim meal and lodging expenses incurred in Helena.

## Accountable Plan

All legislator per diem payments made to a legislator whose home is more than 50 miles from the Capitol are employee reimbursements under an accountable plan for the following reasons:

1. Under 26 U.S.C. 162(h), a legislator is considered to have substantiated living expenses if the legislator’s place of residence is more than 50 miles from the Capitol.
2. Federal law provides one type of accountable plan for when the employee’s “lodging plus meals and incidental expenses” per diem reimbursement is substantiated (26 U.S.C. 62(a)(2)(A), 26 CFR 1.62-2(c)(2)).

## Excess Per Diem Payment

The amount considered substantiated under federal law cannot exceed 110 percent of the amount payable to federal employees for per diem within the U.S. For Montana, the applicable 2009 reimbursement rate (110 percent of the \$121 rate published by the U.S. General Services Administration pursuant to 41 CFR Ch. 301 App. A) is \$131.10. The per diem payment made to legislators is \$103.69 per legislative day, set according to 5-2-301(4), MCA.

Reimbursements paid “under an accountable plan are excluded from the employee’s gross income, are not reported as wages or other compensation on the employee’s Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA) . . .).” (26 CFR 1.62-2(c)(4)).

Montana legislators were paid per diem for 113 regular legislative days at \$103.69 per day, for a total of \$11,716.97. 26 U.S.C. 162(h)(2)(A) considers per diem substantiated during legislative session breaks of up to 4 days. Montana law provides for reimbursement only for breaks of 3 days. During the regular session, there was a 4-day break from April 10 through 13. State per diem was paid for 3 days during the break, but because the break did not exceed 4 days, federal law allowed 4 days as substantiated per diem days. Federal law then allows substantiation of 114 regular days at \$131.10 a day for a total of \$14,945.40. Legislators received \$3,228.43 less in per diem payments (\$14,945.40 - \$11,716.97) than was considered substantiated under federal law. The \$3,228.43 is an unreimbursed business expense and may be a miscellaneous itemized deduction on a 1040 Schedule A, subject to the 50 percent meals allocation under 26 U.S.C. 274(n)(1)(A) (\$44 of the daily per diem, or 36 percent, is considered meals and incidental expenses) and the requirement that miscellaneous itemized deductions must exceed 2 percent of adjusted gross income.

Legislators living more than 50 miles from the Capitol do not have their per diem payments reported on their W-2 Forms and might be able to claim the \$3,228.43 as an unreimbursed business expense that is a miscellaneous itemized deduction under federal law.

## Helena-Area Legislators

Under 26 U.S.C 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the Capitol. Therefore, those legislators must follow the provisions of 26 U.S.C. 274(d) and must specifically substantiate all lodging and meal expenses. Because 26 U.S.C. 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

## ETIC Reviews Energy Efficiency, Conservation, Building Codes

In January, the Energy and Telecommunications Interim Committee heard public comment on energy conservation and building codes as part of the SB 290 study of the state's energy policy. The study bill requires ETIC to analyze Montana's energy policy and consider possible energy policy changes.

Energy conservation – such as turning off a light when leaving a room – reduces the amount of electricity used by a consumer. Energy efficiency – such as use of compact fluorescent light bulbs – results from technologies that are more efficient or use less energy. Demand response is when customers temporarily alter their behavior in response to signals from a utility. An example is domestic hot-water heaters that are cycled off by a utility during times of high electricity demand. Energy conservation, energy efficiency, and demand response are often referred to as “demand-side management,” or DSM. Demand-side management was the focus of the ETIC meeting.

Charlie Grist, with the Northwest Power and Conservation Council, discussed the council's Draft 6th Northwest Power Plan, which envisions that 58 percent of the new demand for electricity over the next five years could be met with energy efficiency. Over the 20-year horizon of the power plan, energy efficiency could meet 85 percent of the Northwest's new demand for power.

Jim Baerg, with Energy+Design, discussed the details of retrofitting a home to be more energy efficient. He recommended increasing tax credits for efficiency measures, increasing utility audit and incentive programs, developing stronger energy codes, and providing financial programs to promote efficiency.

Bryan von Lossberg, with Commons Link, and Eric Edelen, with Bluestone Technologies, discussed the use of “smart” meters to obtain data about energy use and ideas on ways to engage people in learning about energy use. Von Lossberg discussed real-time electricity monitoring, such as that provided at Google's PowerMeter ([www.google.org/powermeter](http://www.google.org/powermeter)) and Energy Circle ([www.energycircle.com](http://www.energycircle.com)).

A panel that included representatives of the state Department of Labor and Industry, the Department of Environmental Quality, the Montana Building Industry Association, and private builders discussed energy efficiency in new construction and Montana's building codes.

Montana is working on revising the statewide energy code by requiring newly constructed homes to meet the latest standards for energy efficiency. These homes will have to meet the requirements of the 2009 International Energy Conservation Code (2009 IECC) with Montana amendments.

Representatives of the Building Codes Bureau, Department of Labor and Industry, met with stakeholders over the past two years to discuss an upgrade from the 2003 IECC standards to the 2009 standards. In June 2009, the Montana Building Codes Council voted to adopt the 2009 standards. State administrative rules require that commercial buildings and residential buildings over three stories comply with the most recently adopted IECC standards or comparable standards. The IECC standards provide minimum requirements for insulation, lighting, and mechanical and service water heating equipment. The 2009 standards are expected to be in place in April.

The next meeting of the ETIC is scheduled for May 13. For more information on energy policy development or the committee in general, contact Sonja Nowakowski, committee staffer, at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or 406-444-3078.

## EQC Works on Studies, Opposes Proposed Rules to Regulate Greenhouse Gases

The Environmental Quality Council met in Helena Jan. 7-8 to work on several assigned studies. Meeting materials are available on the EQC webpage at [leg.mt.gov/eqc](http://leg.mt.gov/eqc).



### **Biomass Study (HJR 1)**

Todd Morgan, of the University of Montana, presented the results of his study of available biomass in Montana forests, and Howard Haines, with the Department of Environmental Quality, discussed available biomass from agricultural residues. The EQC expects to begin developing findings and recommendations on the feasibility of expanding the use of biomass in Montana at its March meeting.

### **Fire Suppression Study (HJR 30)**

Barb Smith, a fiscal analyst with the Legislative Fiscal Division, reported that the total fire suppression costs of the 2009 fire season were \$9.1 million. Of that amount, the federal government is expected to reimburse Montana about \$3.2 million, leaving the state share at about \$5.9 million. The state fire suppression fund will have an estimated balance of \$26.6 million after all Montana expenses are paid.

Smith said that if there is more than \$15 million in the fire suppression fund after May 1, state law allows the Department of Natural Resources and Conservation to spend up to \$2 million of that money on fire prevention, fuel mitigation projects, and grants for the purchase of fire suppression equipment for county cooperatives. However, Mary Sexton, director of DNRC, said the agency doesn't plan to spend any of that money because of current economic conditions and expectations that the 2010 fire season could be a busy one.

### **Recycling Study (SJR 28)**

Sandra Boggs, with the Department of Environmental Quality, and representatives from Tatooine Electronics, a recycler in Billings, discussed e-waste recycling and what happens to the waste once it's turned in by the consumer. Boggs said that, since 2004, over 1.5 million pounds of e-waste has been recycled in Montana. In March, the EQC will begin discussing possible recommendations for increasing recycling and solid waste recovery in the state.

### **Recreation Access to Private Lands (HJR 15)**

Hope Stockwell, EQC staffer, presented information on possible funding sources and program structures for providing monetary incentives to landowners who allow public access to their land for recreational and tourism-

related activities. On the recommendation of the study sponsor, Rep. Mike Milburn, the EQC decided to wait until its March meeting to discuss whether and how it might proceed with developing recommendations for this study.

### **State Agency Monitoring**

One of the EQC's statutory duties is to monitor the activities of several state agencies. In January, the Department of Fish, Wildlife, and Parks reported to the EQC on litigation related to delisting of the gray wolf and implementation of the forest management plan under HB 42. DNRC staff discussed proposed new lease rates for cabin sites on school trust lands. EQC staff presented information on the financial status of the Petroleum Tank Release Fund under the Department of Environmental Quality.

### **EQC Objects to Greenhouse Gas Rules**

The council also reviews rulemaking by state agencies under its purview. In January, the EQC reviewed rules proposed by the Department of Environmental Quality for the Comprehensive Environmental Cleanup Responsibility Act and rules proposed by the Board of Environmental Review for regulating greenhouse gas emissions. The EQC objected to the proposed rules on greenhouse gas emissions. In response, the board canceled the proposed rulemaking on Jan. 14.

### **EQC to Meet Again in March**

The EQC will meet March 4-5 in Room 172 of the Capitol. The time of the meeting is yet to be determined. The draft agenda and meeting material will be available on the EQC webpage ([leg.mt.gov/eqc](http://leg.mt.gov/eqc)) at least 10 days before the meeting.

For more information, contact EQC staffer Todd Everts at 406-444-3747 or [teverts@mt.gov](mailto:teverts@mt.gov) or Hope Stockwell at 444-1640 or [hstockwell@mt.gov](mailto:hstockwell@mt.gov).

### **Legislative Council to Consider Reductions in Spending by Legislative Services**

The Legislative Council will meet March 1-2 in Room 102 of the Capitol. The council and the Legislative Audit Committee and Legislative Finance Committee, which are

also meeting the first week of March, have included on their agendas the adoption of budget reductions for their respective legislative branch agencies.

For more information or to view agendas, minutes, and meeting materials, please visit the Legislative Council webpage at [leg.mt.gov/legcouncil](http://leg.mt.gov/legcouncil), or contact Susan Byorth Fox, executive director, Legislative Services Division, at 406-444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

## Legislative Finance Committee to Examine Fiscal Condition of State on March 4-5

The Legislative Finance Committee will meet in Room 317 of the Capitol on March 4 and in Room 102 on March 5. The committee will examine state general fund revenue trends and potential expenditure reductions. Other agenda items have not been finalized.

The agenda and meeting reports will be available on the Legislative Fiscal Division website ([leg.mt.gov/fiscal](http://leg.mt.gov/fiscal)) by the last week of February. For more information, contact Amy Carlson, director of the fiscal division, at [acarlson@mt.gov](mailto:acarlson@mt.gov) or 406-444-2986.

## December Revenue Collections Still Weak

Fiscal Year 2010 total general fund revenue collections through December exhibited further weakness when compared to the revenue estimates contained in the HJR 2 revenue-estimating resolution.

**Table 1** shows that total general-fund revenue for the biennium is estimated to be \$270.5 million less than expected by the Legislature during the 2009 session. Revenue sources new to the list in December were treasury cash account (TCA) interest earnings and video gaming taxes. The potential shortfall from vehicle fees and taxes is still unknown because of problems the Department of Justice has had with its new automated MERLIN system. The department has made great progress with the interface between the new system and the accounting system, but further research is needed before a definite trend can be identified.

**Figure 1** shows cumulative individual income tax collections through December compared to the HJR 2 annual revenue estimate allocated by month. Individual income tax collections are not keeping pace with the HJR

Estimated Revenue Changes from HJ 2 (Millions)			
Category	FY 2010	FY 2011	Biennium
Individual income tax	(\$108.0)	(\$105.9)	(\$213.0)
Corporation income tax	(\$33.0)	(\$35.0)	(\$68.0)
Oil & gas production tax	\$16.0	\$16.0	\$32.0
TCA interest	(\$4.5)	\$0.0	(\$4.5)
Video gaming tax	(\$8.3)	(\$8.7)	(\$17.0)
Vehicle fees/taxes	?	?	?
Total	(\$137.8)	(\$132.7)	(\$270.5)

*Table 1*

2 estimate and are falling behind the estimate more each month. The difference shown for December, however, shows a small improvement from the previous month. This is because collections in November were offset by refunds associated with extended tax returns filed in October. Based on these trends, individual income-tax collections could be below the HJR 2 estimate by \$108 million for FY 2010.

**Figure 2** shows cumulative corporation income tax collections through December compared to the HJR 2 annual revenue estimate allocated by month. Corporation income tax collections are not keeping pace with the HJR 2 estimate and deteriorated further in December. Based on these trends, corporation income tax collections could be below the HJR 2 estimate by \$33 million for FY 2010.

When the potential shortfall from individual and corporation income taxes, TCA interest earnings, and video gaming taxes is combined with the potential excess from oil and gas production taxes, total general fund revenues could be below the HJR 2 revenue estimate for FY 2010 by \$137.8 million. Based on recent economic data and state tax return data, FY 2011 general-fund revenue could be below the HJR 2 revenue estimate by \$132.7 million. As noted above, the total general fund 2011 biennium revenue shortfall could be \$270.5 million, or about 7.6 percent below the HJR 2 revenue estimates.

Last session the Legislature adopted a policy to maintain a higher general-fund ending fund balance for the 2011 biennium (\$282.4 million) to guard against revenue shortfalls. The potential shortfalls discussed above could decrease the ending general-fund balance to \$16.9 million. This projected balance includes the additional \$5 million received in the FY 2009 ending balance but does not

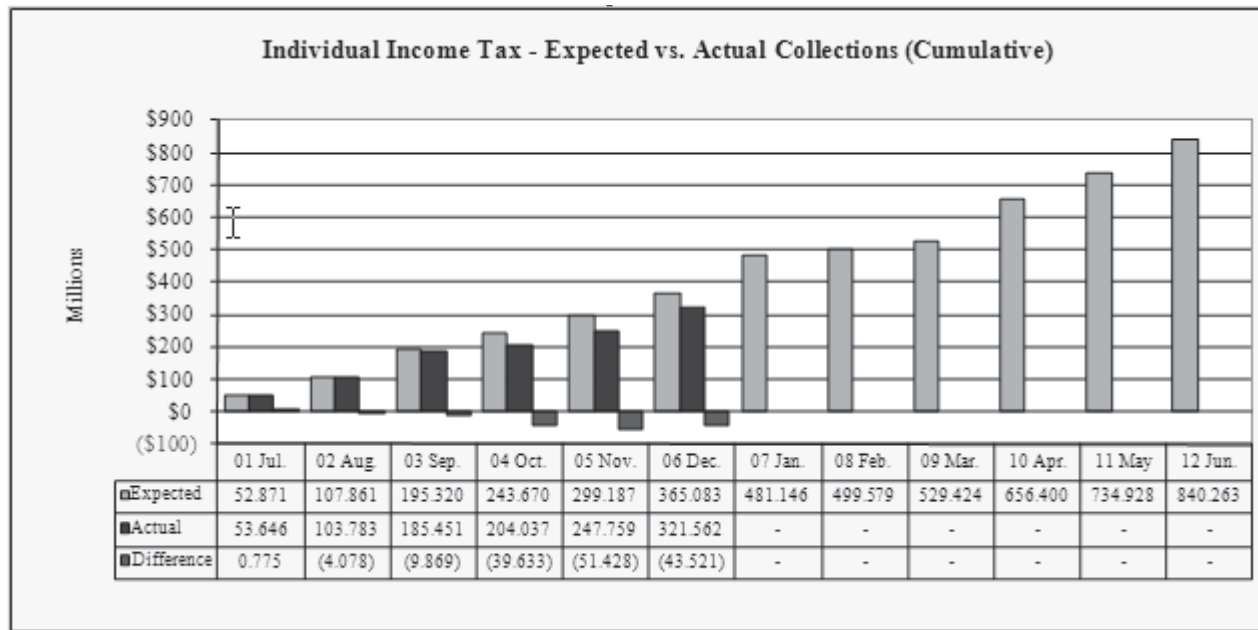


Figure 1

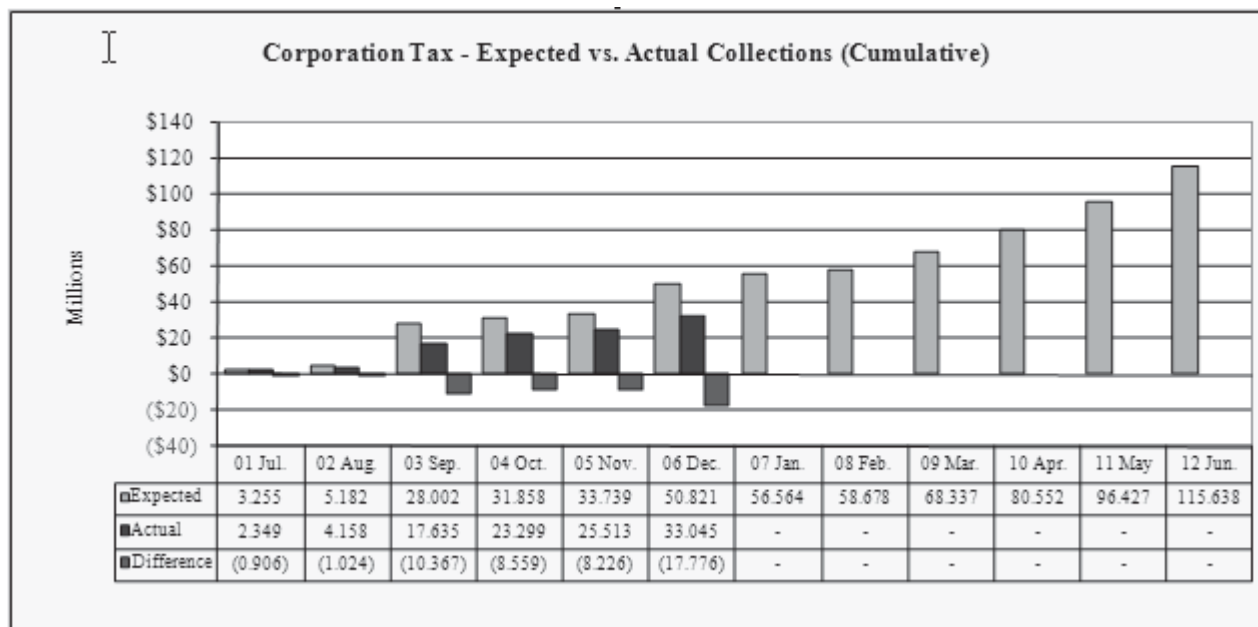


Figure 2

include any supplemental appropriations. If supplemental appropriations were included, the projected balance would likely be negative. Fiscal division staff is reviewing the need for supplemental appropriations.

Under the provisions of 17-7-140, MCA, the current ending general fund balance “floor” (through September 2010) is computed to be \$36.4 million. The statute requires that “the chief budget officer of the state (governor) shall

ensure that the expenditure of appropriations does not exceed available revenue.” If the projected general fund deficit (as certified by the governor’s budget director) falls below the budget “floor,” the budget director is required to submit proposed spending reductions to the Legislative Finance Committee for its recommendations. After reviewing all recommendations, including those of the governor’s budget office and the LFC, the governor determines the final reductions in agency spending.

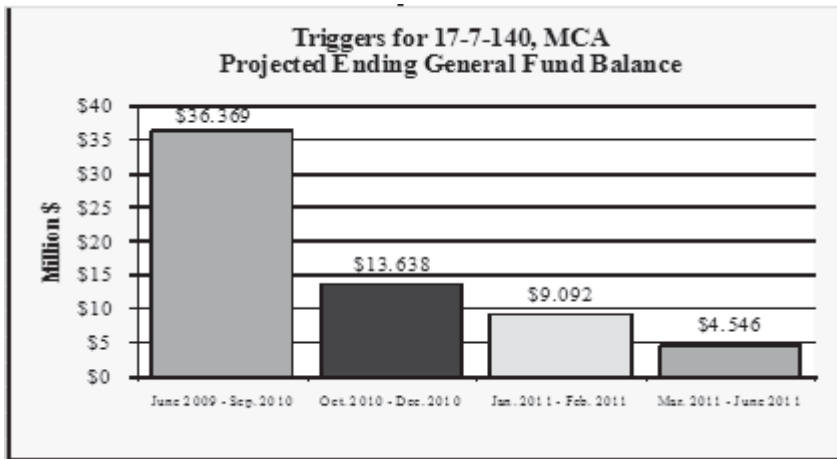


Figure 3

**Figure 3** shows the phased-in trigger points for the projected general-fund budget deficit. The statute was designed to require a lower ending-fund balance toward the end of the biennium.

The projected ending general fund balance of \$16.9 million is \$19.5 million below the current trigger amount of \$36.4 million. When the budget director certifies a deficit (the LFD is not required to project a deficit), the Revenue and Transportation Interim Committee, LFD staff, and the LFC will have to fulfill the statutory requirements of 17-7-140, MCA (see below for schedule).

As discussed in previous general fund revenue reports, revenue collection trends have progressively worsened each month of the 2010 fiscal year. As monthly collections continue to lag the HJR 2 estimates, revenue growth in subsequent months will need to be much greater to achieve the Legislature's estimates. As revenues fall below estimates, the structural imbalance (the difference between ongoing revenues and ongoing expenditures) widens, creating a significant budgeting dilemma for the 2011 Legislature. For more information, contact Terry Johnson, fiscal analyst, at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or 406-444-2952.

### Governor's Spending Reduction Process

As provided in 17-7-140, MCA, if the projected ending general fund balance for the biennium drops below a certain level, the governor is required to direct state agencies to reduce their expenditures for the biennium to ensure that the general fund balance does not fall below that level. The governor may not reduce expenditures by more than 10 percent of any program's spending.

The following schedule shows the current timeline for dealing with spending reductions under 17-7-140, MCA (please note that this schedule could change):

**January 29** — State agencies submit recommended spending reductions to the Governor's Office of Budget and Program Planning (OBPP) and to the Legislative Fiscal Division (LFD). OBPP notifies the Revenue and Transportation Interim Committee of revenue estimates.

**February 5** – LFD develops revised revenue estimates.

**February 18** – RTIC makes recommendations on the OBPP revenue estimates.

**February 19** -- OBPP submits its spending reduction recommendations to the governor and the LFD.

**February 27** – LFD provides a review of the recommended spending reductions to OBPP. (Note that this is a short amount of time from Feb.19. If the OBPP recommends spending reductions that are significantly different from the agency recommended reductions submitted Jan. 29, additional time may be required for LFD review.)

**March 4** – The Legislative Finance Committee (LFC) holds hearings on the spending reduction proposals

**March 5** – The LFC reviews and comments on the spending reductions

For more information on the technical aspects of this process, visit the LFD website at [leg.mt.gov/fiscal](http://leg.mt.gov/fiscal). Additional details of the process will be posted to the website as they become available. For more information or assistance in locating information on the website, contact LFD staff at 406-444-2986.

### RTIC to Examine Property Reappraisal, General Fund Revenue Shortfalls

The Revenue and Transportation Interim Committee will meet Feb. 18-19 to take on property reappraisal and to make recommendations on state general fund revenue shortfalls. A subcommittee looking at residential and



commercial property reappraisal will meet at 8 a.m. Feb. 18 in Room 102 of the Capitol, and a subcommittee looking at agricultural land and forest land reappraisal will meet at 8 a.m. Feb. 18 in Room 137. The full committee will convene at 1:15 p.m. Feb. 18 in Room 137 and at 8 a.m. Feb. 19 in the same room.

### Revenue Projections Key Component

Before the governor makes recommendations on general fund spending reductions under 17-7-140, MCA, the governor's budget director must notify RTIC of the projected amount by which general fund collections will be below the estimates contained in the HJR 2 revenue estimating resolution (see related article on p. 6). The committee is required to make recommendations on the amount before the budget director certifies a projected general fund deficit. The committee will take up this topic during the afternoon of Feb. 18.

### Property Reappraisal Subcommittees

In December, the committee decided to form property reappraisal subcommittees to deal with the complex issues raised on the latest reappraisal cycle at its December meeting. Sen. Kim Gillan, committee chair, has since appointed a residential and commercial property reappraisal subcommittee and an agricultural land and forest land reappraisal subcommittee.

Both subcommittees will meet Feb. 18. At the first meeting, the residential and commercial property reappraisal subcommittee will focus on the valuation of commercial property, and the agricultural land and forest land reappraisal subcommittee will focus on agricultural land productivity and the value of the land before reappraisal. Both subcommittees will also look at the effects on local taxing jurisdictions related to valuation adjustments under the so-called AB 26 informal review process and property tax appeals.

Members of the Residential and Commercial Property Subcommittee are:

Rep. Dick Barrett (chair)	Sen. Christine Kaufmann
Rep. Bill Nooney	Sen. Jeff Essmann
Sen. Kim Gillan	Sen. Bruce Tutvedt

Members of the Agricultural Land and Forest Land Subcommittee are:

Rep. Carlie Boland	Rep. Mike Jopek
Rep. Roy Hollandsworth	Sen. Ron Erickson
Rep. Brian Hoven	Sen. Jim Peterson (chair)

### Other Agenda Items

Also in February, Monica Lindeen, state insurance commissioner, will discuss ideas for reducing the number of uninsured motorists as part of the SJR 16 study of uninsured and underinsured motorists. The Department of Revenue will present analyses of property-tax circuit breaker proposals, which the committee requested in December.

Other agenda items include a report on the SJR 37 study of married taxpayers filing jointly, allocation of indirect costs for certain transportation projects, and reports by the Montana Departments of Transportation and Revenue.

For more information about the committee or subcommittees, contact Jeff Martin, committee staffer, at 406-444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

### State Administration & Veterans' Affairs Committee Reschedules March Meeting

The State Administration and Veterans' Affairs Interim Committee has rescheduled its March 3 meeting to March 19 to allow committee members to participate in the legislative budget training on March 3 (see p. 1).

### Committee to Hire a Consultant

The committee planned to issue an RFP in January to hire a consultant to help with the HB 659 study of public retirement systems. The committee will conduct a teleconference meeting to select the consultant. In March, the committee will begin work with the consultant to set design goals for any retirement plan changes that might result from the study.

### Review of Retirement-Related Proposals

The committee is required by 5-5-228(2), MCA, to review proposed changes to the various state retirement systems. The committee will conduct this review at its April 22-23

meeting. All interested parties, including legislators, citizens, and stakeholders in the retirement systems, may submit proposals to the committee. Interested parties will be allowed to present their proposals at the April meeting. Proposed changes must be delivered to committee staff by March 31.

More information about the retirement system review and forms to use for submitting proposals can be found at [leg.mt.gov/sava](http://leg.mt.gov/sava).

### **Review of Agency Legislation**

The committee decided to conduct its statutorily required review of state agency legislative proposals at its June 24-25 meeting. The committee requests that all agency proposals be submitted to committee staff by May 28.

### **Stay in Touch**

To stay informed of committee activities, please sign up at [leg.mt.gov/sava](http://leg.mt.gov/sava) to receive email updates, or contact Rachel Weiss, committee staffer, at [rweiss@mt.gov](mailto:rweiss@mt.gov) or 406-444-5367.

## **State-Tribal Committee Met in January**

The State-Tribal Relations Interim Committee covered a wide variety of state-tribal topics at a mid-January meeting.

### **Law Enforcement and Corrections**

Jim Smith, co-executive director of the Montana Sheriffs and Peace Officers Association, said consistent training for the different law enforcement agencies involved in extradition would promote better relationships and cooperation among the entities. He said he would contact representatives of the Fort Belknap Reservation and adjacent counties to see if they would be interested in a training program.

Myrna Kuka, American Indian liaison with the Department of Corrections, reported on recidivism rates of the Indian population. She said a pre-release facility designed specifically for Indians would be a culturally appropriate and effective way to reduce recidivism.

### **Education**

Mary Sheehy Moe, deputy commissioner of the Office of

the Commissioner of Higher Education, described how the Montana university system is trying to improve access to two-year education for Indians and other populations.

Denise Juneau, superintendent of the Office of Public Instruction, discussed OPI's support of struggling "turnaround schools." OPI works with school leadership to improve student retention and achievement. In response to a question from a committee member, Juneau said charter schools are not a viable solution to some of the K-12 challenges facing Indian students.

### **Health Care and Human Services**

Pete Conway, director of the Billings Area Indian Health Service, discussed a variety of topics, including the Indian Health Service, funding, prescription drug abuse, and Medicaid.

Anna Whiting Sorrell, director, and Shirley Brown, division administrator, both from the Department of Public Health and Human Services, described the IV-E foster care programs. In response to concerns expressed at the committee's Fort Belknap meeting, Sorrell said the department will experiment again with a well-researched, well-planned advance reimbursement plan with Fort Belknap.

Sen. Sharon Stewart-Peregoy urged the committee to continue examining health-care disparities that exist among Indians and low-income people. The committee agreed to include the following items at its next meeting:

- a report on the status of federal reauthorization of the Indian Health Care Improvement Act, as well as national health-care reform proposals under consideration by Congress;
- a report on how DPHHS and other lead agencies plan to deal with the requirements and opportunities that these two health-care initiatives entail; and
- a discussion of the committee's role in facilitating the implementation of the agencies' plans.

### **Other Topics**

Jennifer Perez-Cole, director of the Governor's Office of Indian Affairs, provided an update on Indian affairs. She said there was an excellent turnout and positive response to tribal relations training offered by her office last December.

Casey Barrs, committee staffer, discussed a concern at Rocky Boy's Reservation about the census count on the reservation and funding of the Low Income Emergency Assistance Program (LIEAP). He said the Chippewa Cree recently signed an agreement with the state specifying a funding formula for LIEAP payments.

Andrew Huff, GAIN attorney with the Office of Budget and Program Planning, discussed a long-standing dispute between Fort Belknap Reservation and Blaine County

over road maintenance and the motor fuel tax. He said the matter could be resolved through a cooperative agreement that takes into account the tribe's concern that the motor fuel tax be used for its intended purpose and the county's concern about liability.

Sen. Jonathan Windy Boy said he will conduct one or more meetings of the Tribal Historic Preservation Officers in Great Falls in February to discuss cultural and historical protocols for preservation.

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## How Do You Amend U.S. Constitution to Prohibit Budget Deficit?

**Q. What is the process for amending the U.S. Constitution in order to prohibit a federal budget deficit and require that the federal government maintain a fiscal reserve equal to one percent of the total budget as passed by Congress?**



A. Article V of the U.S. Constitution provides that the federal constitution may be amended in one of two ways:

by a congressional proposal or by a federal constitutional convention called at the request of the legislatures of two thirds of the states. The U.S. Constitution does not provide for the people of any state to vote by initiative to call a federal constitutional convention.

An amendment proposed by Congress or by a federal constitutional convention must be ratified by three-quarters of the states, either by the legislature or by a state convention in those states. This subject matter (prevention of federal budget deficits) does not require any procedure other than that contained in Article V for the amendment of the U.S. Constitution generally.

The case law decided pursuant to Article V discloses the following points regarding amendment of the U.S. Constitution that are not necessarily stated in the text of Article V itself:

- Congress may propose an amendment by resolution,

- for which the signature of the president is unnecessary.
- Congress may include in the amendment a reasonable time period by which the states must ratify the amendment.
- A request by a state legislature for a federal constitutional convention may be made in the form of a legislative resolution not signed by the state governor.
- Ratification by state referendum or initiative violates the provisions of Article V and as such are not valid means of ratification.

Although ratification of an amendment to the U.S. Constitution is a federally derived power, state law governs the method of calling a state convention for ratification. In Montana, if the Congress proposes a federal constitutional amendment to be ratified by state convention, the convention to ratify must be held as required by 13-26-101, MCA. The convention is governed by Title 13, chapter 26, part 1, MCA.

However, if Congress prescribes any details for the calling of state conventions for ratification, 13-26-111, MCA, provides that the federal provisions supersede conflicting state provisions. There is no express provision in Montana statutes governing the calling of a state convention to ratify an amendment proposed by a federal constitutional convention.

## The Back Page

## All Shook Up: Explore Use of Legislative Histories with The King

By Lisa Mecklenberg Jackson  
Legislative Staff Attorney

When you're an Elvis Presley fan, you can manage to tie Elvis, his music<sup>1</sup>, his movies<sup>2</sup>, his moves<sup>3</sup>, to almost anything – parties<sup>4</sup>, food<sup>5</sup>, wardrobe<sup>6</sup>, etc. But legislative history and legislative intent – isn't that a bit of a stretch?

Au contraire, says the biggest Elvis fan in the Montana Legislative Branch and the individual charged with writing this Back Page article. So, don't be a hound dog. Read on to see the importance of legislative intent by way of the music of The King himself, Mr. Elvis Aron Presley<sup>7</sup>.

1 The author became a fan of Elvis in high school in Minnesota. It was winter – besides iceskating and building snow forts, there was not much else to do.

2 My favorite: Blue Hawaii. Released in November 1961, Blue Hawaii featured Elvis as Chad Gates, a tour guide and singer who must bend to the will of a powerful mother played by Angela Lansbury. The film established a new tone for Elvis movies – an exotic setting, a boy-gets-in-trouble-but-gets-girl-in-the-end plot, and big musical production numbers. Frank Coffey, *The Complete Idiot's Guide to Elvis*, Alpha Books: New York (1997).

3 "I jump around because it is the way I feel. In fact, I can't even sing with a beat at all if I stand still." Elvis Presley

4 The author has hosted several Elvis-themed parties through the years, including one featuring a guest appearance by Elvis and Priscilla.

5 Jan. 8, 2010, would have been Elvis' 75th birthday. Legislative Services Division staff "enjoyed" peanut butter and banana sandwiches (Elvis' favorite) in recognition of the event.

6 Included in the author's Elvis wardrobe: belt, bracelet, earrings, T-shirt, sweatshirt, pants, and even a skirt of Elvis fabric!

7 Jan. 8, 1935: Elvis Aron Presley was born to Gladys and Vernon Presley of Tupelo, Miss. His twin brother, Jesse Garon, was stillborn. Jan. 8, 1946: Eleven-year-old Elvis, who wants a .22-caliber rifle for his birthday, is given a six-string guitar instead. July 18, 1953: Elvis goes to Sam Phillips' Memphis Recording Studio and cuts a four-dollar acetate record. Accompanying himself on guitar, he covers two songs by the The Ink Spots, "My Happiness" and "That's When Your Heartaches Begin." Secretary Marion Keisker makes history by turning on a tape recorder and capturing Elvis' first studio visit. July 5, 1954: Elvis joins musicians Scotty Moore and Bill Black at Sun Studios to record several songs. Elvis is nervous and the session goes poorly. During a break, Elvis picks up his guitar and tries to get loose, riffing on a blues tune by Arthur "Big Boy" Crudup called "That's All Right (Mama)." Scotty and Bill join in. Sam Phillips overhears the jam session and senses he's found gold, literally. July 7, 1954: Phillips gives a local DJ, Dewey Phillips, a copy of "That's All Right (Mama)" and the flip side, "Blue Moon of Kentucky," to air on his Red, Hot, and Blue radio show. Response is so strong that Dewey plays the record at least 14 times. July 19, 1954: "That's All Right (Mama)" is released by Sun Records. The rest is history.



*Legislative Attorney Lisa Mecklenberg Jackson explains the finer points of researching legislative histories to her longtime pal, Elvis.*

### Good Luck Charm:<sup>8</sup> Purpose of Legislative History

In Montana, the term "legislative history" means the various documents created as a bill moves through the legislative process. Legislative histories provide a historical context for lawmakers focused on enacting new laws or amending existing ones. They also help state agencies understand the laws they are responsible for implementing. Montana legislators, lobbyists, attorneys, and judges often need to research the legislative history of the applicable statute to make a reasoned argument on the intention of

8 Debuted March 24, 1962, spent 17 weeks on the billboard charts, rose as high as #17.



the legislative body that passed a particular law.<sup>9</sup> When a statute's language is ambiguous in a particular context, one would examine case law for court interpretations of the language. But if there is no controlling case law on point, researchers, legislators, and lawyers may decide to research the legislative history of the law and cite it as persuasive authority to support their position.

If a statute is not clear on its face, the primary sources for determining legislative intent in Montana are the minutes<sup>10</sup> of the meetings of the legislative committees (including the committee of the whole) that considered the bill, the exhibits<sup>11</sup> to the hearings, and the various versions of the bill that were proposed throughout the legislative process,<sup>12</sup> as well as any drafting records called "junque."<sup>13</sup>

### It's Now or Never:<sup>14</sup> Clear Intent

It is not unusual that legislation passes all the procedural hurdles but does not accomplish what the sponsors, or others, thought it would. As legislative staff, we sometimes hear, "but that's not what I intended" when questioned about the particular workings of a certain bill.<sup>15</sup>

For example, if a legislator wants Silver Bow County to be exempt from a particular statewide county program,

9 Comments made by Montana Supreme Court Justice Jim Rice and Montana First Judicial District Judge Jeffrey Sherlock during their presentation on "The Role of the Courts" at the Law School for Legislators event, Jan. 6, 2009, Montana State Capitol.

10 In Montana currently, "minutes" are a written tape time log that consists of a summary of the proceedings and the testimony before each committee. In 1997, the Legislature began making audiotapes of its committee hearings. In 2003, the Legislature began making committee hearings available on the legislative website at leg.mt.gov. The time log refers the user to the audiotapes or, later, to the audio file of the hearings available. Verbatim transcripts of the legislative committee hearings do not exist. Beginning with the 2003 session, the Legislature started recording the floor debate in each house. Prior to that time, no transcript, summary, or recording of these floor debates was made beyond the short notations in the daily Journal for each house. In 2009, floor sessions were video streamed and archived.

11 Exhibits include such items as proposed amendments, copies of written testimony, roll call attendance, roll call votes, and visitor registers.

12 Sometimes there is no legislative discussion of the "intent" of a particular bill, so compiling a legislative history (see sidebar at the end of this article) can sometimes be a fruitless effort.

13 In Montana, any drafting notes that accompany the bill draft request are public record and available for viewing. The Legislative Services Division keeps the previous two sessions of junque files.

14 Debuted July 25, 1960, spent 16 weeks on the billboard charts, reaching #1.

15 In the words of the Montana Legislative Code Commissioner, "I only care what the law says, not what you intended."

then the legislator needs to explicitly state that in the legislation. "With the exception of Silver Bow County, this program applies...." Each sponsoring legislator should make sure that the bill reads exactly as the legislator wants it, including any amendments that may have altered the bill from its original state. That way, the legislator's intent will be clear on its face and not subject to multiple interpretations.<sup>16</sup>

But what happens if the legislator thought the intent of the bill was clear, but others think it is not. Then the matter may be brought before Montana's courts for statutory interpretation.

### Return to Sender:<sup>17</sup> Meaning of Law

A court will not look to the legislative history of a statute if the plain meaning of the law is clear.<sup>18</sup> In Montana, the rules of statutory construction require the language of a statute to be construed according to its plain meaning, and there is an abundance of case law illustrating that point. If the language is clear and unambiguous, no further interpretation is required.<sup>19</sup> The courts will resort to legislative history only if legislative intent cannot be determined from the plain meaning of the statute.<sup>20</sup>

In construing a statute, the court must find legislative intent from the plain meaning by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only a part of the statute.<sup>21</sup> In construing a statute, the court must ascertain and declare what is the substance of the statute and may not insert what has been omitted or

16 Legislative intent must be determined from the plain meaning of the words used, and if the interpretation of a statute can be so determined, a court may not apply any other means of interpretation; plain, unambiguous, direct, and certain language leaves nothing for the court to construe. *White v. White*, 195 M 470, 636 P2d 844 (1981).

17 Debuted on Oct. 27, 1962, spent 14 weeks on the billboard charts, reaching #2.

18 Where the intention of the Legislature can be determined from the plain meaning of words used in a statute, the courts may not go further and apply any other means of interpretation. *Tongue River Elec. Co-op, Inc. v. Mont. Power Co.*, 195 M 511, 636 P2d 862 (1981).

19 The Montana Supreme Court's function in construing legislation is to ascertain and state what, in terms or substance, is contained within the legislation; and if the language is plain, unambiguous, direct, and certain, the statute speaks for itself. It is the court's duty to construe the law as it finds it. *State ex rel. Palmer v. Hart*, 201 M 526, 655 P2d 965 (1982). See also *Estate of Langendorf*, 262 M 123, 863 P2d 434 (1993).

20 *Lovell v. St. Comp. Mut. Ins. Fund*, 260 M 279, 860 P2d 95 (1993). See also *St. v. Zabawa*, 279 M 307, 928 P2d 151 (1996).

21 *Gaub v. Milbank Ins. Co.*, 220 M 424, 715 P2d 443 (1986).

omit what has been inserted; the court may not indulge in judicial legislation.<sup>22</sup>

The Montana Supreme Court has even looked to a bill's title to determine what the Legislature meant. In a 1982 case, *Dept. of Natural Resources and Conservation v. Clark Fork Logging Co.*,<sup>23</sup> the logging company and the logger were sued by the state for the cost of putting out a forest fire that was accidentally ignited when a chainsaw backfired. The state sought to hold the logging company and the logger absolutely liable for the fire under 50-63-103, MCA.<sup>24</sup> The trial court granted summary judgment to the logging company and the logger on this count, and the state appealed. The Supreme Court held that 50-63-103, MCA, applied only to situations where the fire was deliberately set. "It is clear from the title of the Act that its purpose is to control the burning of forest material through the issuance of permits. Thus, 'setting a fire' in the context of this Act and statute refers to an intentional setting of a fire."<sup>25</sup> The Court stated that the statute did not apply to this situation because the fire was accidentally started when a spark from the chainsaw ignited a slash pile. The court concluded that under these facts, summary judgment was properly granted

### Devil in Disguise:<sup>26</sup> Ambiguous Statutes

Montana courts are required by statute to determine legislative intent.<sup>27</sup> Legislative histories are used when the language of a statute is ambiguous and more detail<sup>28</sup> about the legislative intent is needed.<sup>29</sup> The court presumes the Legislature would not pass a meaningless statute, and the

court must harmonize statutes relating to the same subject so as to give each effect.<sup>30</sup> In harmonizing statutes, the court can look to the legislative history of the statute to determine legislative intent. In addition, great deference and respect must be given to interpretation of the statute by agencies charged with its administration.<sup>31</sup>

This concept is reflected in a 1996 Montana Supreme Court case, *St. v. Smaage*.<sup>32</sup> Smaage had a history of seven DUI arrests when he was arrested again while driving with a blood alcohol level of 0.250. After review of his record of drinking and driving, Smaage was charged with criminal endangerment, which Smaage contended was improper, rather than with driving under the influence. Smaage also asserted that the criminal endangerment statute was unconstitutionally vague as applied to him because he was not given fair notice that driving after drinking was a felony crime.

The Supreme Court found that the statutes were not conflicting but rather were alternative charging statutes. The legislative history of the criminal endangerment statute indicated legislative intent in allowing use of that statute in prosecutions for DUI. Because the elements of criminal endangerment were present in this case due to Smaage's mental state of acting "knowingly," the conviction was affirmed.

### Love Me Tender:<sup>33</sup> If Constitution's Involved

Montana courts also examine legislative intent to resolve conflicting constitutional provisions. To determine the meaning of a constitutional provision, a court applies the same rules of construction used to construe statutes.

22 *Taylor v. Rann*, 106 M 588, 80 P2d 376 (1938). In the construction of a statute, it is not permissible to read something into or out of it to make it understandable or workable. In *re Baxter's Estate*, 101 M 504, 54 P2d 869 (1936).

23 198 M 494, 646 P2d 1207 (1982).

24 50-63-103, MCA. Liability of offender for damages and costs.

25 198 M 494 at 496.

26 Debuted July 13, 1963, spent 8 weeks on the billboard charts, reaching #3..

27 Section 1-2-102, MCA. In the construction of a statute, the intention of the Legislature is to be pursued if possible. When a general and a particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

28 A single word cannot be used to find intent. A statute's intent cannot be derived from the definition of one word; a statute derives its meaning from the entire body of words taken together. *Wyse v. District Court*, 195 M 434, 636 P2d 865 (1981).

29 Generally, a court will look to the legislative history for guidance when the enacted text was capable of two reasonable readings or when no one path of meaning was clearly indicated. Norman J. Singer, 2A *Statutes and Statutory Construction*, section 46.01 (6th Ed. 2000).

30 Defendant's contention based on a strict interpretation of one section of the Dangerous Drug Act would totally defeat the legislative intent behind the Act. Statutes must be read and considered in their entirety, and legislative intent may not be gained from the wording of one particular section or sentence but only from a consideration of the whole. The court's duty is to interpret individual sections of the Act in such a manner as to insure coordination with the other sections of the Act. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979).

31 When a statute is ambiguous and its legislative history provides no clarification, a court will often defer to an agency's interpretation of a statute in ascertaining how a statute should be construed. *Christenot v. Dept. of Commerce*, 272 M 396, 901 P2d 545 (1995). Agency interpretation primarily consists of: (1) agency rules; and (2) the history of the agency's implementation of those rules.

32 276 M 94, 915 P2d 192 (1996), following *U.S. v. Mazurie*, 419 US 544, 42 L Ed 2d 706, 95 S Ct 710 (1975).

33 Debuted Oct. 20, 1956, spent 19 weeks on the billboard charts, reaching #1.

When there are several constitutional provisions that would otherwise be inconsistent, a construction should be adopted, if possible, that will give effect to all of them.

A conflict between statutory law and constitutional provisions should be reconciled, if possible.<sup>34</sup> However, a legislative act is void in its entirety despite the presence of a severability clause when core provisions of the act are unconstitutional.<sup>35</sup>

Although a statute may be ambiguous because of a wide variety of possible situations that are covered by the statute, a court is not required under due process standards to find vagueness in the terms used in a statute so as to destroy an act; rather, it is the court's duty to construe a statute so as to be consistent with the will of the Legislature and to comport with constitutional limitations.<sup>36</sup> A statute will not be interpreted to defeat its object or purpose, and the object sought to be achieved by the Legislature is of prime consideration in interpreting it.<sup>37</sup>

### **Don't Be Cruel:<sup>38</sup> Absurdity of End Result**

Courts have a duty to be reasonable in examining legislative history to determine legislative intent of particular legislation. One of the end results the court looks at is the absurdity of the end result.

In *Mont. Shooting Sports Assoc. (MSSA) v. State*,<sup>39</sup> the plaintiffs, a sports association and its president, sought a declaration that defendant, the Montana Department of Fish, Wildlife, and Parks (FWP), could not lobby the Legislature as a proponent or opponent of proposed legislation or otherwise influence decisions. The district

court denied the plaintiffs' motion for summary judgment and in effect granted summary judgment to FWP.

Plaintiffs appealed. The parties disagreed over the proper interpretation of the term "political actions" under 87-1-204, MCA.

In examining the legislative intent behind the enactment of 87-1-204, MCA, the Montana Supreme Court found the plaintiffs' broad interpretation of construing the term "political" to connote all activities "of or relating to the conduct of government," including lobbying and testifying before the Legislature as well as attempts to influence individual legislators, conflicted directly with the numerous statutory obligations imposed on FWP to appear before and report to the Legislature. The interpretation would have prevented FWP and its employees from fulfilling the agency's obligations to cooperate and make agreements with other governmental entities. In other words, to enforce the plaintiff's interpretation of 87-1-204, MCA in light of the legislative history would have been absurd.<sup>40</sup>

### **Treat Me Nice:<sup>41</sup> Committee Minutes Essential**

Montana courts look at minutes of committee meetings<sup>42</sup> to determine legislative intent if the meaning of the legislation is not clear on its face.<sup>43</sup> For example, an examination of the Senate Judiciary Committee minutes revealed that the Legislature envisioned including drivers of cars within the purview of the criminal endangerment statute.<sup>44</sup>

In determining if a distinction existed between livestock and business inventory for property tax purposes, the Montana Supreme Court looked to the Senate Taxation Committee minutes to determine that the Legislature intended different tax treatment of these types of property.<sup>45</sup>

<sup>34</sup> *State ex rel. Nelson v. District Court*, 262 M 70, 863 P2d 1027 (1993).

<sup>35</sup> *White v. St.*, 233 M 81, 759 P2d 971 (1988). The requirement that a statute that contains several provisions will be construed to give effect to all does not mean that if it is not possible to give effect to all, the court gives effect to none. It means that as many as possible are given effect and not that they all stand or fall together. *State ex rel. St. Bd. of Equalization v. Glacier Park Co.*, 118 M 205, 164 P2d 366 (1945).

<sup>36</sup> *In re Mont. Pac. Oil & Gas Co.*, 189 M 11, 614 P2d 1045 (1980), citing *CSC v. Letter Carriers*, 413 US 548, 37 L Ed 2d 796, 93.

<sup>37</sup> *Dover Ranch v. Yellowstone County*, 187 M 276, 609 P2d 711 (1980). The cardinal principle of statutory construction is that the intent of the Legislature is controlling. *St. v. Meader*, 184 M 32, 601 P2d 386 (1979), following *Baker Nat'l Ins. Agency v. Dept. of Revenue*, 175 M 9, 571 P2d 1156 (1977).

<sup>38</sup> Debuted Aug. 4, 1956, spent 24 weeks on the billboard charts, reaching #1.

<sup>39</sup> 2008 MT 190, 344 Mont. 1, 185 P.3d 1003 (2008).

<sup>40</sup> Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it. 2008 MT 344 1 at 6.

<sup>41</sup> Debuted Oct. 21, 1957, spent 14 weeks on the billboard charts, reaching #18.

<sup>42</sup> Committee minutes vary to some degree and may be scant in detail (for example, "a discussion period followed"), or they might be quite detailed, including questions asked of and answers given by a sponsor, lobbyist, or legislative staff.

<sup>43</sup> While recognizing that a legislator's thoughts on a statute are not binding on the court, the court looked to the House Judiciary Committee minutes to determine that parking lots were intended to be included in the area covered by the phrase "ways of the state open to the public." *City of Billings v. Peete*, 224 M 158, 729 P2d 1268 (1987).

<sup>44</sup> *St. v. Bell*, 277 M 482, 923 P2d 524 (1996).

<sup>45</sup> *Montana Stockgrowers v. Department of Revenue*, 238 M 113 777 P2d

In determining whether costs incurred by a claimant included attorney fees, the Supreme Court relied on a statement by the administrator of the workers' compensation division as reflected in the Labor and Employment Relations Committee minutes to determine that costs included attorney fees.<sup>46</sup>

### Heartbreak Hotel:<sup>47</sup> Not Perfect, but Essential

In instances where interpretation of legislation is necessary, the court will look to the plain meaning. If the meaning is ambiguous, a court will attempt to ascertain the meaning in whatever way it can. That may involve an examination of the legislative history of the legislation. In all instances involving statutory interpretation, committee minutes and other legislative history materials are essential in understanding the intent of the legislation.

This article has discussed the importance of legislative history in determining legislative intent. Even if the legislative history is not perfect, it's the best we have.<sup>48</sup> Legislators, lobbyists, state agencies, and the courts rely on the legislative record, so it is critical to know what's going in the record and how to access and use it.

Nothing much is ever completely new in the legislative process. Most major pieces of legislation may take about ten years to become law. A body as large and diverse as a state legislature takes about that long to absorb a new concept, refine it, and finally adopt it. Examining the legislative history for all iterations of the legislation can be an enlightening pursuit.

Whether you're an Elvis fan or not, you would be hard pressed to deny his impact on world music, much as you would be hard pressed to deny the importance of legislative history in finding legislative intent. And who knew that one day Elvis would be singin' the legislative intent blues on behalf of one legislative attorney in

Helena, Montana, whose office bears his likeness?<sup>49</sup> Elvis may have left the building,<sup>50</sup> but his legacy lives on... in more ways than he, or anyone else, could have possibly imagined.

### Are You Lonesome Tonight?<sup>51</sup> Want to Compile a Legislative History?

Following each section of the Montana Code Annotated (MCA), there is a "history" section that lists each of the session laws that either enacted ("En") or amended ("amd.") the section. Example: En. Sec. 295, Ch. 560, L. 1999; amd. Sec. 3, Ch. 201, L. 2003.

This means the MCA section was originally enacted by section 295 of Chapter 580 from the 1999 legislative session and was amended by section 3 of Chapter 201 from the 2003 legislative session. There will be separate legislative histories for the original enactment of a statute and each of the subsequent amendments to it.

1. Find the appropriate bill number from the chapter number by using either the table of contents in the first volume of the session laws for the particular legislative session or the chapter index in the last volume of the session laws.
2. Look up the bill number in the *History and Final Status* volume for the year in which you are interested.<sup>52</sup> Here you will find the list of committees to which the bill was referred, as well as the dates the bill was heard in committee and the day executive action was taken – days on which there may be committee discussion of the bill.<sup>53</sup>

49 The author has six lifesized cardboard cutouts in her office that she rotates periodically. She does recall a visit during the 2009 session from a General Services Division employee whose office faces the author's, wanting to see who it was standing in the author's office every night after all employees had gone home. He said it "freaked him out a bit."

50 Elvis died on Aug. 16, 1977, at age 42 from complications of a prescription drug addiction. At the time of his death, 110 titles of Elvis' albums and singles were certified as either gold, platinum, or multi-platinum (U.S. sales). Because of that number – about twice as many as The Beatles – Elvis is considered by many to be the greatest recording artist of all time. "There have been many contenders, but there is only one King." Bruce Springsteen

51 Debuted Nov. 14, 1960, spent 14 weeks on the billboard charts, reaching #1. Elvis was nominated for a Grammy for this song in 1960 in the Best Male Vocal Performance category but lost out to Ray Charles for "Georgia on My Mind."

52 *History and Final Status* volumes were first published in 1981. Before then, House and Senate Journals must be used to determine which committees heard the legislation you are interested in.

53 Other than possible floor discussion regarding your bill, the hearing and executive action of the bill in committee is the only situation in an en-

285 (1989).

46 N.A. Van Lines v. Evans Transfer and Storage, 234 M 209, 766 P.2d 220 (1988).

47 Debuted Jan. 27, 1956, spent 22 weeks on the billboard charts, reaching #1.

48 Legislation arises from a political process laced with a diversity of opinion, conflicting influences, and struggles to effect public policy. As a result, the record left behind may be a rich but contradictory legislative history. Further complicating matters is the fact that the record may contain the expressions of two different legislative bodies and the concurrence of the executive. David, Kelly, and Ford, *Use of Legislative History: Willow Witching for Legislative Intent*, 43 Idaho L. Rev. 585 (2007).



3. You may also wish to check out any exhibits accompanying the bill in the committee hearing.<sup>54</sup>
4. Beginning in 1999, the Legislature began putting committee minutes online at [leg.mt.gov](http://leg.mt.gov).<sup>55</sup> In the left-hand navigation bar, click on “Sessions.” Choose the appropriate session. Click on the LAWS link at the top of the page.<sup>56</sup> Click on the “Look Up Bill Information” link and enter your bill information. You

will now get a list that tells you in what committee and when your bill was heard in committee and on the floor.

5. Use the back button to go back to the Session page of the year you are interested in. Click on the “Committee Minutes” link. Pick the appropriate House or Senate committee and the date of hearing or executive action. You will want to look at the minutes for both. Since 2005, you will see links to the minutes for each date and for most committees, a link to a Real Audio file recording of the hearing accompanied by a tape log giving you the time stamp in which discussion of your bill began and ended.

ture legislative session in which a bill is talked about such that one might get the “intent” of the legislation and what the sponsor hopes to accomplish with the bill or amendment.

54 In 2005, the Legislature began posting committee exhibits online. They are accessible through links in the committee minutes. Before then, the exhibits are available on a CD (since 1997) or in paper format.

55 For locations of pre-1999 minutes, bills, and exhibits, please see accompanying sidebar.

56 LAWS is the electronic equivalent of the *History and Final Status*.

## Sources of Legislative History

Completing a legislative history in Montana may be difficult because resources for the history may be in a variety of places. Several facilities contain the same resources, but some are available only in certain places. For example, legislative histories compiled before 1977 are available only from the Montana Historical Society.

### Committee Minutes

**Print:** Since 1977, committee minutes are in paper form in bound books at the State Law Library. The Montana Historical Society has a complete set of printed committee minutes back to the early 1950s and some before then. This is the only source for committee minutes from before 1977.

**Online:** Since 1999, minutes are available on the legislative branch webpage at <http://leg.mt.gov/css/Sessions/default.asp>. In 2003, the Legislature began making recordings of committee hearings available online. Also in 2003, the Legislature began recording the floor debate in each house of the Legislature.

**Other:** For the period between 1987 and 1995, committee minutes are available on microfiche at the State Law Library and the Legislative Reference Center. The Montana Historical Society has audio tapes of committee meetings since 1997.

### Bills

**Print:** The Montana Legislature has paper copies of bills from 1991 to the present. Since 1977, bills are also in paper form in bound books at the State Law Library. The Montana Historical Society has a complete set of printed committee bills back to the earliest sessions.

**Online:** Since 1997, bills are available from the legislative website at <http://leg.mt.gov/css/Sessions/default.asp>.

**Other:** The Montana Legislature has a CD with all bills on it from 1991 to 1997 prior to the bills going online.

### Committee Exhibits

**Print:** The Montana Historical Society has exhibits back to the earliest sessions.

**Online:** Since 2005, exhibits are available from the legislative website at <http://leg.mt.gov/css/Sessions/default.asp>.

**Other:** The Montana Legislature has produced a CD with exhibits on it every session since 1997.

**All interim committee meetings are held in the Capitol in Helena unless otherwise noted.**

February 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8 Law & Justice Committee, time TBA, Rm 137	9 Law & Justice Committee, time TBA, Rm 137	10	11	12	13
14	15	16	17	18 Revenue & Transportation Subcommittees, 8 am, Rms 102 & 137  Revenue & Transportation Committee, 1:15 pm, Rm 137	19 Revenue & Transportation Committee, 8 am, Rm 137	20
21	22	23	24	25	26	27
28						

**You can find the most up-to-date information  
about legislative interim committee meetings  
on the Legislative Branch website**

**leg.mt.gov**

**All interim committee meetings are held in the Capitol in Helena unless otherwise noted.**

March 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Legislative Council, time TBA, Rm 102  Legislative Audit Committee, time TBA, Rm 172	2 Legislative Council, time TBA, Rm 102  Legislative Audit Committee, time TBA, Rm 172	3 Legislative Training Day, 10 am, House Chamber	4 Legislative Finance Comm, 8 am, Rm 317  Environmental Quality Council, time & place TBA	5 Legislative Finance Comm, 8 am, Rm 102  LFC Subcomms on Performance Measurement, 1 pm, Rm 102  Environmental Quality Council, time & place TBA	6
7	8	9	10 Water Policy Committee, time & place TBA	11 Water Policy Committee, time & place TBA	12 Education & Local Govt. Committee, time TBA, Rm 137	13
14	15 Children, Families, Health & Human Services Committee, time TBA, Rm 137	16 Children, Families, Health & Human Services Committee, time TBA, Rm 137	17	18	19 State Admin. & Veterans' Affairs Committee, time & place TBA	20
21	22	23	24	25	26	27
28	29	30	31			

Legislative Services Division  
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